

NEW YORK STATE WORKERS' COMPENSATION BOARD

IN THE MATTER
OF
CITY OF PLATTSBURGH, A MEMBER OF
PUBLIC ENTITY TRUST OF NEW YORK (PETNY)

DEFICIT
ASSESSMENT
CONTRACTUAL
AGREEMENT

THIS DEFICIT ASSESSMENT CONTRACTUAL AGREEMENT ("Agreement") is entered into by and between the New York State Workers' Compensation Board ("State" or "WCB"), with offices located at 20 Park Street, Albany, New York, and the above-named Member ("Member") of the above-named Trust ("Trust"), said New York State Workers' Compensation Board and Member to be collectively referred to herein as the "Parties."

RECITALS

WHEREAS, the Trust, was approved to operate as a group self-insurer for the payment of workers' compensation benefits under Article IV of the New York State Workers' Compensation Law (WCL);

WHEREAS, the Member was an active member of the Trust for the period of time as shown in Schedule 3 to the Deficit Reconstruction and 2010 Assessment, attached hereto as "Attachment B";

WHEREAS, in connection with the approval of the WCB to operate as a group self-insurer the Trust agreed to abide by the terms and conditions contained within the provisions of the WCL and attendant regulations, codified at 12 NYCRR 317 et. seq. (Code), applicable to group self-insurers;

WHEREAS, in accordance with the Code, all group self-insurers, including the Trust, must maintain trust assets in excess of trust liabilities, as those terms are defined in the Code;

WHEREAS, in accordance with the Code, the Chair of the WCB may engage an attorney, actuary, certified public accountant or other qualified person or organization to conduct an examination of the annual reports required to be submitted (Fiscal Review);

WHEREAS, in accordance with the Code, the WCB performed Fiscal Review (s) of the Trust;

WHEREAS, the WCB's Fiscal Review(s) to date have resulted in a determination by the WCB of the Deficit Reconstruction and 2010 Assessment (Trust's Assessment) as shown on Attachment B;

WHEREAS, the WCB utilized an allocation methodology as contained in Attachment B (“allocation methodology”), attached hereto;

WHEREAS, the allocation methodology set forth in Attachment B has resulted in a determination by the WCB that the pro rata allocation of the Trust’s deficit to be allocated to Member may be repaid as set forth in the Payment Plan Options, Attachment A, attached hereto;

WHEREAS, the WCB has commenced an action against Compensation Risk Managers, LLC, (CRM) Index # 10288-09 (Albany Cty. Filed Dec. 9, 2009) (WCB Action) seeking to recoup damages sustained by, inter alia, the Trust arising out of certain actions and omissions of CRM in administering the Trust’.

NOW, THEREFORE, having considered this matter and being duly advised, and based on the promises and agreements as set forth below, which consideration the parties by signature acknowledge and agree to be sufficient, **IT IS HEREBY AGREED AS FOLLOWS:**

I. Collection of Trust’s Deficit and 2010 Assessment (Trust’s Assessment)

(A) The Member acknowledges and agrees to the Member’s indebtedness as set forth in Attachments A and B and further agrees to pay the portion of the Trust’s Assessment allocated to the Member in strict conformity with the terms and conditions of this Agreement.

(B) The WCB agrees, subject to paragraph (D) below, that as long as the Member remains in strict compliance with this Agreement, it will not seek from the Member and/or refer for immediate collection against the Member, the Member’s pro rata assessment as set forth in Attachment B.

(C) The Member agrees that the running of all periods of limitation applicable to the claims which the State has or may have against the Member related to the Trust and the Trust’s Assessment are hereby tolled from the effective date of this Agreement to the end of the payment plan period for Member, inclusive, but in no event shall it be longer than three (3) years from the effective date of this Agreement (“Tolling Period”). The time during which this Agreement is in effect, which time shall commence as of the effective date of this Agreement, shall not be asserted or relied upon in any way in computing the running of the time under any applicable statute of limitations or by way of laches in defense against the State’s claims.

(D) In the event that damages are recouped from the WCB’s Action and are ultimately allocated to reduce the cumulative deficit of the Trust, they will be used first to repay prior statutory assessments relative to the Trust levied upon other self-insured employers; second to repay current statutory assessments relative to the Trust levied upon other self-insured employers; and third to otherwise reduce the cumulative deficit of the Trust, as set forth in Attachment B, by proportionately reducing the annual yearly deficits of the Trust in the amount that such individual annual yearly deficit of the Trust bears to the total Trust deficit. In accordance with Section II(B) of

this Agreement any resultant change in the Member's pro rata assessment as a result of the recoupment of said damages shall be forthwith computed by the WCB, the WCB shall issue the Member a new Attachment A reflecting such change and the Member agrees to, and shall, remit payments according to such new Attachment A.

II. Allocation Methodology

- (A) The allocation methodology used by the Board has been previously provided to the Member and is a part of Attachment B.
- (B) BY EXECUTING THIS AGREEMENT, THE MEMBER ACKNOWLEDGES THE APPROPRIATENESS OF THE ALLOCATION METHODOLOGY AND FURTHER AGREES TO AND HEREBY WAIVES ANY RIGHT TO CHALLENGE IN ANY FORUM OR PROCEEDING WHATSOEVER THE WCB ALLOCATION METHODOLOGY USED HEREIN AS CONTAINED IN ATTACHMENT B, PROVIDED HOWEVER, THAT THE RESULTS THEREOF WITH REGARD TO MEMBER'S PRO RATA ALLOCATION, AS SHOWN IN ATTACHMENT A, ARE SUBJECT TO FUTURE RECONCILIATION AT WCB'S SOLE DISCRETION, INCLUDING BUT NOT LIMITED TO, RECONCILIATION BASED ON ANY APPLICABLE RECOVERIES FROM THIRD PARTIES.

III. Payment Plan

(A) Payment Plan Applicable Term

The Member agrees, by executing this Agreement, that it has chosen the Option as outlined in Attachment A hereto.

(B) The Member shall make the payments payable to the name of the Trust, which is set forth in the heading/caption on page one of this Agreement.

(C) The Member shall send the applicable payments to:

NCA Comp., Inc.
14 Lafayette Square
Suite 7000
Buffalo, NY 14203

(D) The Member shall return this executed Agreement to:

Workers' Compensation Board
Office of General Counsel
20 Park Street
Albany, NY 12207

(E) The Member will pay a dishonored check fee of Twenty Dollars (\$20.00) for all checks returned for insufficient funds. In the event of a dishonored check, and in

- (F) In the event that the Member makes all payments contemplated under the terms of Attachment A, the WCB shall provide the Member with a full release for any and all liability claimed by the WCB associated with the Member's participation in the Trust.

IV. Default

- (A) The Member shall strictly comply with the terms and conditions contained in this Agreement.
- (B) The Member's failure to comply with any provision of this Agreement, including but not limited to the failure to timely make any payment(s) required under this Agreement, shall constitute a default and a failure to perform an obligation under this Agreement and shall be deemed to be a violation of both this Agreement and the WCL.
- (C) In the event of a default WCB shall provide written notice thereof. The Member shall have ten calendar days following the date of such written notice within which to cure any such default (Cure Period). If written notice is provided by regular mail, Member shall have an additional five (5) days within which to cure any such Default.
- (D) In the event that the Member fails to cure a default within the Cure Period, it is agreed by the Parties that the entire amount assessed to Member herein shall become due and payable immediately. **In such event**, the WCB, in its sole discretion, may pursue any and all rights and remedies available to it in this regard.
- (E) If the WCB shall, in its sole discretion, accept any cure of a Default outside the Cure Period, such acceptance shall not be, and shall not be deemed to be, a waiver of the WCB's right to require timely performance with respect to any and all future obligations owed by the Member, including but not limited to timely delivery of subsequent payments.

V. Indemnification

The Member shall indemnify and hold harmless the WCB, the State of New York, and their representatives and employees for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Member and its successors (including successors in title) and assigns.

VI. Reservation of Rights

- (A) The WCB hereby reserves all its legal, administrative and equitable rights arising at common law or as granted to it pursuant to statute or regulation, including, but not limited to, any powers under the WCL and the rules and regulations enacted pursuant thereto.
- (B) Except as otherwise expressly provided herein, the Parties reserve all of their rights, remedies and defenses against each other and against any person or entity not a party to this Agreement, including, without limitation, their rights to assert any claim, defense, set-off, counterclaim, cross-claim or other claim of whatever nature against each other or against any person or entity not a party to this Agreement.

VII. Applicable Law

This Agreement shall be governed by, construed, and interpreted in accordance with the laws of the State of New York.

VIII. Entire Agreement

The Agreement, including Attachments A and B hereto, constitutes the entire agreement between the Parties. No modification to this Agreement shall be effective except as set forth in writing and agreed to by the Parties with the same formality as this Agreement. The provisions, terms, and conditions of this Agreement shall be deemed to bind Member, its agents, servants, employees, successors, and assigns.

X. Authority to Execute Agreement

The individual signatories to this Agreement, by their execution of this Agreement, represent and attest that they have the authority to bind the respective Party for whom they are signing and by signing do so bind said Party to all of the terms and conditions of this Agreement.

XI. Effective Date

The Effective Date of this Agreement shall be the date that it is signed by the Board as the last signatory hereto.

XII. Miscellaneous Provisions

- (A) This Agreement shall be considered to have been prepared jointly by the Parties and their respective attorneys, and in the event of in any dispute or ambiguity shall not be construed against any Party as if such Party was the drafter.
- (B) The captions and section headings, if any, in this Agreement are for convenience only and are not to be considered part of the Agreement.

- (C) If any provision of this Agreement shall be held to be invalid or unenforceable in any respect, the same shall not affect the validity and enforceability of the remaining provisions hereof, so long as the material purpose of this Agreement can be determined and effected.
- (D) Unless otherwise specifically stated elsewhere in this Agreement, any correspondence or communication to the WCB relating to this Agreement shall be made to the following via regular mail:

Workers' Compensation Board
Office of General Counsel
20 Park Street
Albany, NY 12207

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date(s) set forth below:

**NEW YORK STATE WORKERS'
COMPENSATION BOARD**

ROBERT E. BELOTEN, CHAIR

By: _____
Kenneth Munnelly
General Counsel, NYS Workers' Compensation Board

Date: _____

ACKNOWLEDGMENT

STATE OF NEW YORK)
COUNTY OF _____) ss.:

On the _____ day of _____, in the year 20____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to within the instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

NOTARY PUBLIC

CONSENT BY MEMBER

The Member acknowledges the authority and jurisdiction of the New York State Workers' Compensation Board to issue this Agreement, affirmatively waives its right, if any, to notice, opportunity to be heard, hearing and judicial review in the manner provided by law, consents to the issuance of this Agreement and agrees to be bound by the terms, provisions and conditions contained herein.

Member:

By: _____

Title: _____

Date: _____

ACKNOWLEDGMENT

STATE OF NEW YORK)
COUNTY OF _____) ss.:

On the _____ day of _____, in the year 20____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to within the instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

NOTARY PUBLIC